



Proposed Stream Protection Rules For In Stream Sand and Gravel Mining

Preamble to this Proposal

It is not the intent of the *Land Reclamation Act* or associated regulations to regulate landowners use of their own private land. The Missouri Department of Natural Resources absolutely respects the rights of property owners. The intent of the Act is directed toward commercial mining operations. Private individuals are not required to obtain mining permits when extracting sand and gravel from their own land solely for their own personal use.

The Land Reclamation Commission Sand and Gravel Workgroup

During the July 2002 Land Reclamation Commission meeting, the Commission directed staff to institute a workgroup to look at the issue of stream protection rules. The workgroup consisted of representatives of all interested parties. The workgroup goal was to come to consensus on proposed rule language that will protect Missouri streams from the effects of mining, yet satisfy most all concerns of the affected public. There have been four meetings of this group of 35 to 40 representatives and a final set of recommendations was completed. The group struggled with the need for the proposed rules, the purpose of the proposed rules and the cost associated with implementation of the proposed rules. The workgroup recommendations will be presented to the Land Reclamation Commission on January 30, 2003 for their consideration. Also, all dissenting comments and letters of concern will be included so that the Commission will have a complete picture of the workgroup members' concerns. We will not move forward in the rule making process until directed by the Commission. If the commission directs us to file the rules, there will be a 90-day public comment period during the formal rules process.

Background leading up to the formulation of the workgroup:

In September of 2001, the Land Reclamation Commission and the department both authorized the Land Reclamation Program to file proposed rules that would convert stream protection guidelines into rules. The guidelines were developed in 1995 by a former workgroup together with the Water Pollution Control Program, the Department of Conservation and the Corps of Engineers into rules administered by the Corps. In the late 1990s, the US Supreme Court ordered the Corps to cease issuing these permits, leaving the regulation of in stream mining to the states individually. The Land Reclamation Commission first raised the issue that these stream protection guidelines be proposed as rules in 2001, and thus the program worked to adopt them from guidelines into rules. The guidelines that were proposed for the rule revision only address stream protection issues for commercial mining operations. Landowners, local governments and anyone with a mining permit from another agency are exempt from the Land Reclamation Act permit for instream sand and gravel mining.

In the fall of 2001 the proposed rules were filed with the Secretary of State and included a 30-day public comment period. We received letters of support from other government agencies, and we also received letters of protest from local governments, the Missouri Farm Bureau and many operators. Most of the protest letters cited the cost of implementation of the proposed rules, some confusion of what the rules were intended to do, and that not enough time was available for public comment. Since these guidelines were already a condition of many permits, the program did not understand the concerns about cost, because the proposed rules and existing guidelines were one and the same.

As a result of the comments and confusion, we determined that the best course of action was to set up informal public meetings with the groups who had expressed concern. The proposed rule was pulled from the register and four public meetings were held in Rolla, Springfield and Poplar Bluff and Columbia concerning this issue. These were held in December 2001 and January 2002. A hearing before the Land Reclamation Commission on this subject was held on January 24, 2002 in conjunction with the regularly scheduled meeting of this commission. After listening to and realizing the concerns and confusion of the proposed rule, the Commission ordered the workgroup to be formed during their July 2002 meeting.

Attachments:

- A. Workgroup Rule Recommendations
- B. Workgroup Meeting Notes
- C. Interested or Affected Groups
- D. History of the guidelines
- E. Original Rule Proposal
- F. What other states are doing
- G. Letters of Response to this Proposal
- H. November 2002 Letter to Senator Steelman